

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

United States of America
vs.

Frederick H. Banks
Defendant.

Civil Action No. 04-1943
Criminal No. 96-64

FILED

SEP 30 2005

CLERK, U.S. DISTRICT COURT
WEST. DIST. OF PENNSYLVANIA

SCANNED

FILED

SEP 30 2005

CLERK, U.S. DISTRICT COURT
WEST. DIST. OF PENNSYLVANIA

Motion for Reconsideration of
Sept 20, 2005 Order of Court
denying Motion to vacate and
Coram Vobis and Motion to
take Judicial Notice that
Defendant is under Federal
Custody

Defendant Frederick H. Banks ^(Banks) moves this Court to reconsider its position denying his motion to vacate and to take judicial notice that Defendant is under Federal Custody and orders;

1. A defendant may move for reconsideration to bring additional facts to the Court's attention that the Court or parties may not have known at the time of disposition or denial of a motion.

2. Banks notified the Court and parties that he is in fact under Federal Custody pending his appeal. See US v. Banks 03-245 (WOPA) therefore "this Court has subject matter jurisdiction over [this] action[s] brought pursuant to 28 USC § 2255 by defendant[s] " in custody under sentence of a [Federal] Court" at the time of the filing. 28 USC § 2255; See Mahony v. Cook, 490 US 490-91 (1989)."

4. Indeed, Banks did not deny that he was in federal custody as he assumed that since his mailing address on his pleadings was to the Allegheny County Jail #120759 950 Second Avenue Pittsburgh PA 15219. The parties would recognize that he was indeed in Federal Custody. In fact during late last September / October Constance Bowden, AUSA said hello to Banks as he was being dragged down the hall in shackles to Judge Hardin's Courtroom during the trial. Ms. Bowden was representing the USA in a multi-defendant case in Judge Amy Holmes Court see USA v. Jason Evans (WOPA) and on USA v. Lavarle Graham (WOPA) Therefore it cannot be said that the USA had no knowledge that Banks is in Federal Custody.

5. Also, this conviction does carry continuing consequences because it factors on Banks employment prospects. It is of no consequence that order was decided three years after the defendant was sentenced since, an element of a crime is a

Structural defect that is retroactively applied to correct justice. Since, the error goes to the heart of the crime it cannot be considered harmless, but is instead a fundamental defect. *US v. Bibenfeld*, 957 F.2d 98, 102-03 (3d Cir. 1992).

6. Since Banks simply answered the questions the way his lawyer told him to it cannot be said that he admitted anything and an evidentiary hearing is warranted to determine if the ineffective conduct ~~reaches~~ reaches the threshold to withdraw the plea over this factual dispute *Solis v. US* 252 F3d 289, 295 (3d Cir. 2001). Banks is not a foreigner but an American citizen and as such is entitled to all of the laws and rights afforded to him by the forefathers under the Constitution. WHEREFORE the defendant - petitioner Frederick H. Banks respectfully demands that the motion for reconsideration of Sept 20, 2005 order of Court denying motion to vacate and Coram Vobis and motion to take judicial notice that defendant is under Federal Custody be granted.

Respectfully Submitted,

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Frederick Banks
#120759
Allegheny County Jail
950 Second Avenue
Pittsburgh, PA 15219

AND NOW, THIS 5th DAY OF Oct 05, IT IS HEREBY ORDERED THAT THE WITHIN MOTION IS DENIED..

G L Lancaster
GARY L. LANCASTER,
UNITED STATES DISTRICT JUDGE

Defenden + -retiner